

#### **D. REMARKS**

This is an Amendment in Response to a Final Office Action, which Office Action bears the mailing date of October 6, 2008.

#### **Summary of Record of November 14, 2008, Telephone Interview**

The below-signed attorney is appreciative of the Examiners' consideration and time during the telephone interview. The applicant has amended Claims 1, 2, 5 and 9 to address the Examiners' comments regarding the "covering portion" and the "leg" elements of the claims. It is respectfully submitted that the amended claims do not require an amended specification, as the current specification fully supports the amended claims.

#### **General Considerations**

As explained in more detail in the specification, the present invention describes high-strength wall anchors and surface-mounted anchoring systems employing the same. In particular, the invention concerns sheetmetal wall anchors and wire formative veneer ties that comprise positive interlocking components of the anchoring system. The invention provides particular benefits to seismic-resistant structures and to cavity walls with special requirements including high-strength requirements for structural performance capable of withstanding a 100 lbf, in both tension and compression.

The present inventor has patented prior wall anchors and interlocking systems (U.S. Patent 4,598,518 and 4,875,319) that greatly benefit the construction industry. However,

under certain conditions, the previously designed anchors and systems do not sufficiently maintain the integrity of the insulation or meet the more rigorous tension and compression specifications. Building specifications such as the Energy Code Requirement, Boston, Massachusetts (see Chapter 13 of 780 CMR Seventh edition) set forth insulation R-values well in excess of prior editions which results in thicker insulation and larger cavities. Emphasis is placed on creating a building envelope that is designed and constructed with a continuous air barrier to control air leakage into or out of conditioned space adjacent to the inner wythe. The prior art wall anchors cause significant insulation tearing when installed in current wall structures that contain the required thicker insulation. The tearing of the insulation permits air and moisture to infiltrate and damage the insulation.

One response to the damage is to create a patch at the site of the tear. Although, such patchwork improves the insulation condition, it is undesirable because it adds additional costs and work hours to the construction project. The present inventor's wall anchors with inwardly located legs provide a baseplate that seals the insertion point precluding the penetration of air, moisture and water vapor into the inner wythe structure. Further, the legs are formed to fully or partially sheath the mounting hardware of the wall anchor, reducing the openings in the insulation, wallboard and waterproofing membrane and have only point contact with the metal studs with substantially no resultant thermal conductivity. Such varied applications address the problems of the prior art which include insulation.

### **Allowance of Claims 11-19, 21**

The below-signed attorney is appreciative of the Examiner's consideration and allowance of Claims 11-19, 21.

### **Claim Rejections - 35 USC §103(a)**

The Examiner relies on Hohmann 4,598,518 in view Stephens 1,854,633 as the basis for the 35 U.S.C. §103(a) rejection as to Claims 1-8 and 20. The Examiner further relies on Hohmann '518 in view of Stephens '633 in further view of Liu 6,098,364 as the basis for the 35 U.S.C. §103(a) rejection as to Claim 9. However, it is respectfully urged that the Examiner has erred in interpreting the present claims and provides no factual basis to support a conclusion of obviousness.

In rejecting a claim under 35 U.S.C. 103(a), the Examiner needs to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, F.2d 1071, 1073 (Fed. Cir. 1988). Obviousness is determined using underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) secondary considerations such as commercial success, long felt but unsolved needs or failure of others. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR* ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.").

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 1988). The Examiner must show that each and every limitation of the claim is described or suggested by the prior art or would have been obvious based on the knowledge of those of ordinary skill in the art. *In re Fine*, 837 F.2d at 1074. Further, the prior art as a whole must be considered and the teachings viewed as they would have been viewed by one of ordinary skill. *In re Hedges*, 783 F.2d 1038, 1041 (Fed. Cir. 1986). "It is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *Id.* (Quoting *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965)).

KSR disapproved a rigid approach to obviousness. KSR at 1741. Importantly, rejections based on §103(a) must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. See *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968).

Hohmann '518 discloses a surface-mounted wall anchor designed primarily for dry-wall construction, but may also be used with masonry backup walls. Hohmann '518 teaches bifurcated pronged end members that abuttingly engage the channel to properly position

the anchor. The pronged end member combined with a fastener provides a triangular type securement against the channel. In order to prevent moisture permeation from the outer wythe to the inner wythe, Hohmann '518 utilizes either sealant or a neoprene washer

Liu '364 provides a prefabricated outer wall structure with stress rupture resistance that utilizes silicone between the inner unit and the outer decorative wall unit. The silicone adheres the inner unit to the outer decorative wall unit.

Stevens '633 provides an invention dating back to 1931 that teaches a combination window, door jamb and buck anchor which may also be used as a wall tie. The Stevens '633 is directly attached to the inner wythe and offers an elongated plate for insertion into the outer wythe.

It is respectfully submitted that the Examiner errs in reading the present claims. The Examiner states "... Stephens was used for its teaching of strengthening ribs to modify the legs of [the present invention] to include strengthening ribs to provide reinforcement by adding strength and rigidity to the sheet material. Therefore, the modified wall anchor of Hohmann and Stephens would have a strengthening rib in each leg creating a channel that is capable of allowing for sheathing mounting hardware." (See page 8). The present invention does not disclose a strengthened leg structure, but rather offers strengthening ribs that are impressed in the base of the wall anchor substantially parallel to the bail opening. During installation of the anchor, the ribs are pressed into the surface of the insulation to

provide additional sealing.

It is respectfully submitted that the Examiner has not identified any evidence or provided any reasoning to show that the prior art explicitly or implicitly discloses a device or combination of devices that would yield an anchor similar to the present invention or lead a person of ordinary skill in the art to develop the present invention. Therefore, the Examiner does not meet the standard set forth in 35 USC §103(a).

It is respectfully urged that the Applicant has shown that the Examiner has erred in rejecting the claims. Here the Applicant has met the standard set forth in *In re Kahn*, which finds that "... an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness." (quoting *In re Roufet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

**Claims 1-8, 20: 35 USC §103(a) rejection based on Hohmann '518 in view of Stephens '633**

It is respectfully submitted that the Examiner improperly combines a pronged veneer anchor (Hohmann '518) with a combination window, door jamb and buck anchor (Stephens '633) in support of the obviousness rejection of Claims 1-8 and 20. The proposed combination does not yield the present invention.

It is respectfully submitted that the Examiner misreads the Hohmann '518 disclosure. Hohmann '518 does not teach inwardly located legs with an associated baseplate that seals the anchor insertion points. The Examiner depicts a cover portion [c] on page 6 (Fig. 3).

However, the stated cover portion is merely the bend point of the sheetmetal that starts the formation of the anchor leg. This bend point is not set inward from the outer surface [o] and will not seal the opening caused by the insertion of the legs into the wallboard, insulation and waterproofing membrane. Typically when the construction worker inserts the anchor into the inner wythe, the anchor is inserted one leg at a time. After the top leg is inserted the anchor is swung downward to insert the second leg. The swinging action causes a tear in the wallboard, insulation and waterproofing membrane above the top leg and below the bottom leg. The present invention provides inwardly set legs that allow the anchor base to seal the insertion points. The Examiner's cover portion [c] simply would not be able to provide a seal.

The Examiner further asserts that Hohmann '518 has "sealant means for further sealing between said plate-like body and said exterior layer." (p. 5) The Examiner is correct that Hohmann '518 discloses the use of sealing means, but such sealing means are separate from the Hohmann '518 anchor. Hohmann '518 states "the present invention contemplates the provision of a sealant around the area where the pronged portion pierces the wall board 16. Alternatively, the pronged ends 37 may be provided with neoprene washers to thereby prevent any moisture permeation of the pierced portion of the wallboard 16." (Col. 3, lines 52-57). The present invention greatly improves the Hohmann '518 anchor by using the actual anchor to provide sealing.

It is respectfully submitted that the Examiner's further offer of Stephens '633 in support of the 35 USC §103(a) argument is misplaced. Stephens '633 provides an open back device. Stephens '633 provides strengthening means 11 on each side of the anchor slot 6. Even with the side strengthening means, the elementary design of Stephens '633 would fail in the present application. Further, Stephens '633 does not teach the strengthening rib that upon mounting is inserted into the insulation and assists in sealing, nor does it provide an obvious modification of Hohmann '518 to develop the present invention.

It is respectfully submitted that the Examiner's position that Hohmann '518 can be combined with Stephens '633 to produce the present invention is incorrect. In addition to the previously provided novelties, the present invention teaches inwardly set legs that when inserted into the inner wythe are completely within the perimeter of the anchor mounting surface. The novel location of the legs allows the surrounding mounting surface to seal the insertion openings caused by the legs, inhibiting water, moisture and vapor infiltration.

It is respectfully submitted that the Examiner fails to provide a reference that includes the unique inwardly set legs. Additionally, the Examiner does not provide a reference that discloses legs that are constructed to sheathe the mounting hardware. Hohmann '518 only provides bores 32 for mounting hardware and not channels that provide angular guidance.

To further clarify the unique nature of the present invention, Claims 1, 2 and 5 are rewritten to include a clarification of the pair of leg portions and remove any reference to



an “inboard” location. The rewritten claims also clarify the covering portion that assists in sealing the insertion points. The covering portion extends to both sides of the insertion point through the use of the mounting surface and the leg portions. It is respectfully submitted that the rewriting of the present independent claim and the associated dependent claim, obviates the rejection of Claims 1-8 and 20.

**Claim 9: 35 USC §103(a) rejection based on Hohmann '518 in view of Stephens '633 in further view of Liu '364**

Claim 9 is hereby canceled, obviating the Examiner's 35 USC §103(a) rejection of Claim 9.

**Allowable Subject Matter**

Claims 1 and 2 are rewritten and are respectfully urged to overcome the 35 USC §103(a) rejections with respect to Claims 1-8 and 20.

**Conclusion**

The present invention sets forth a novel wall anchor with unique structural properties that enhance insulation integrity and offer heightened waterproofing properties not set forth in the cited prior art. It is respectfully submitted that the Examiner's references are overcome by the posited arguments presented and it is respectfully submitted that the rejection of Claims 1-8 and 20 is improper.

This Amendment incorporates by reference the arguments made in the prior Amendments. These arguments were found to be persuasive. As presently amended, the

above-subject Application is urged to be in condition for allowance and an early and favorable response is anticipated. If the Examiner has further questions that can be resolved by telephone, the Examiner is invited to call the undersigned.

Date:

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Respectfully submitted,

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